

Jeffrey H. Reeves (SBN 156648)
GIBSON, DUNN & CRUTCHER LLP
4 Park Plaza, Suite 1400
Irvine, California 92614-8557
jreeves@gibsondunn.com
(949) 451-3800 (Telephone)
(949) 451-4220 (Facsimile)

and

S. Ashlie Beringer (admitted *pro hac vice*)
Joshua A. Jessen (SBN 222831)
Laura M. Sturges (admitted *pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
1801 California Street, Suite 4200
Denver, Colorado 80202
aberinger@gibsondunn.com
(303) 298-5718 (Telephone)
(303) 313-2868 (Facsimile)

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GRATEFUL DEAD PRODUCTIONS, a
California corporation, CADESTANSA, LLC, a
limited liability company on behalf of CARLOS
SANTANA, an individual, JIMMY PAGE, an
individual, ROBERT PLANT, an individual,
JOHN PAUL JONES, an individual,
RAYMOND MANZAREK, an individual,
ROBBY KRIEGER, an individual, JOHN
DENSMORE, an individual, PEARL
COURSON, an individual, GEORGE
MORRISON, an individual, FANTALITY
CORP., a Colorado corporation, SONY BMG
MUSIC ENTERTAINMENT, a Delaware
general partnership, BMG MUSIC, a New York
partnership, and ARISTA RECORDS, a
Delaware LLC,

Plaintiffs,

v.

CASE NO. 06-07727 (JW) (PVT)

**DECLARATION OF JOSHUA A. JESSEN
IN SUPPORT OF PLAINTIFFS' MOTION
TO COMPEL (1) SUBSTANTIVE
RESPONSES TO PLAINTIFFS' FIRST
SET OF INTERROGATORIES, AND (2)
PRODUCTION OF DOCUMENTS AND
THINGS**

Date: June 26, 2007

Time: 10:00 a.m.

Ctrm: Honorable Patricia V. Trumbull

1 WILLIAM E. SAGAN, an individual, NORTON
2 LLC, a limited liability company, and BILL
3 GRAHAM ARCHIVES LLC, d/b/a
4 WOLFGANG'S VAULT, a limited liability
company,

5
6 Defendants.

7
8 NORTON LLC, a limited liability company,
9 BILL GRAHAM ARCHIVES LLC, d/b/a
10 WOLFGANG'S VAULT, a limited liability
company, and WILLIAM E. SAGAN, an
individual,

11 Counterclaimants,

12 v.

13 GRATEFUL DEAD PRODUCTIONS, a
14 California corporation, CADESTANSA LLC, a
15 limited liability company on behalf of CARLOS
16 SANTANA, an individual, JIMMY PAGE, an
17 individual, ROBERT PLANT, an individual,
18 JOHN PAUL JONES, an individual,
19 RAYMOND MANZAREK, an individual,
20 ROBBY KRIEGER, an individual, JOHN
21 DENSMORE, an individual, PEARL
22 COURSON, an individual, GEORGE
MORRISON, an individual, FANTALITY
CORP., a Colorado corporation, SONY BMG
MUSIC ENTERTAINMENT, a Delaware
general partnership, BMG MUSIC, a New York
partnership, and ARISTA RECORDS, a
Delaware LLC, ROBERT WEIR, an individual,
WARNER MUSIC GROUP CORP., a Delaware
corporation, RHINO ENTERTAINMENT, its
subsidiary, and BRAVADO INTERNATIONAL
GROUP, INC., a California corporation,

23 Counterclaim Defendants.
24
25
26
27
28

1 I, Joshua A. Jessen, declare as follows:

2 1. I am an attorney licensed to practice law in all courts in the State of California and am
3 admitted to practice before the United States District Court, Northern District of California. I am an
4 associate in the law firm of Gibson, Dunn & Crutcher LLP and am one of the attorneys responsible
5 for the representation of the Plaintiffs in this matter. I make this declaration of my own personal
6 knowledge and, if called as a witness, I could and would testify competently to the facts stated herein.

7 2. Attached hereto as Exhibit **1** is a true and correct copy of the Joint Case Management
8 Statement and [Proposed] Order, which was filed on April 2, 2007.

9 3. Attached hereto as Exhibit **2** is a true and correct copy of Defendants' Supplemental
10 Responses to Plaintiffs' First Set of Requests for Admissions, dated May 14, 2007.

11 4. Attached hereto as Exhibit **3** is a true and correct copy of Defendants' Request for
12 Production of Documents to Plaintiffs, Set One, dated March 21, 2007.

13 5. Attached hereto as Exhibit **4** is a true and correct copy of Plaintiffs' First Request for
14 Production of Documents, dated March 21, 2007.

15 6. Attached hereto as Exhibit **5** is a true and correct copy of Plaintiffs' First Set of
16 Interrogatories, dated March 21, 2007.

17 7. Attached hereto as Exhibit **6** is a true and correct copy of Plaintiffs' First Requests for
18 Admission, dated March 21, 2007.

19 8. Attached hereto as Exhibit **7** is a true and correct copy of Defendants' Responses to
20 Plaintiffs' First Set of Requests for Production of Documents, dated April 23, 2007.

21 9. Attached hereto as Exhibit **8** is a true and correct copy of Defendants' Responses to
22 Plaintiffs' First Set of Requests for Admissions, dated April 23, 2007.

23 10. Attached hereto as Exhibit **9** is a true and correct copy of Defendants' Objections to
24 Plaintiffs' First Set of Interrogatories, dated April 23, 2007.

25 11. Attached hereto as Exhibit **10** is a true and correct copy of a letter I sent to
26 Defendants' counsel on April 27, 2007, requesting that a meet-and-confer conference be held
27 regarding Defendants' discovery responses on April 30, 2007.
28

12. Attached hereto as Exhibit **11** is a true and correct copy of a letter I received from Defendants' counsel on April 30, 2007.

13. On April 30, 2007, my colleague (Ashlie Beringer) and I met and conferred telephonically with Defendants' counsel (Rebecca Calkins and Erin Ranahan) for approximately one and a half hours. During that conference, Defendants' counsel expressed their belief that Plaintiffs had served more than 100 interrogatories. Ms. Beringer and I acknowledged that certain of Plaintiffs' interrogatories arguably consisted of more than one interrogatory, but we informed Defendants' counsel that Plaintiffs' interrogatories certainly did not exceed the 100-interrogatory limit. In an effort to understand Defendants' position, however, we asked Defendants' counsel to identify, on an interrogatory-by-interrogatory basis, the total number of interrogatories Defendants believed Plaintiffs had served. Defendants' counsel agreed to do so by the following day, but – even before undertaking the exercise – promised Plaintiffs' counsel that Defendants' calculation would result in a number higher than 100.

14. Attached hereto as Exhibit **12** is a true and correct copy of an e-mail I received from Defendants' counsel on May 1, 2007. The e-mail contains Defendants' calculations – on an interrogatory-by-interrogatory basis – of how many interrogatories Defendants believe Plaintiffs have served. In this e-mail, Defendants' counsel contends that Plaintiffs have served 366 interrogatories, including five interrogatories (Interrogatory Nos. 3, 4, 5, 7 and 16) that alone allegedly total 253 separate interrogatories.

15. Attached hereto as Exhibit **13** is a true and correct copy of an e-mail I sent to Defendants' counsel on May 1, 2007.

16. Attached hereto as Exhibit **14** is a true and correct copy of an e-mail I received from Defendants' counsel on May 2, 2007.

17. Attached hereto as Exhibit **15** is a true and correct copy of an e-mail I sent to Defendants' counsel on May 4, 2007.

18. Attached hereto as Exhibit **16** is a true and correct copy of an e-mail I received from Defendants' counsel on May 8, 2007.

1 19. Attached hereto as Exhibit **17** is a true and correct copy of an e-mail I sent to
2 Defendants' counsel on May 8, 2007.

3 20. Attached hereto as Exhibit **18** is a true and correct copy of an e-mail I received from
4 Defendants' counsel on May 8, 2007.

5 21. Attached hereto as Exhibit **19** is a true and correct copy of an e-mail I sent to
6 Defendants' counsel on May 8, 2007.

7 22. Attached hereto as Exhibit **20** is a true and correct copy of an e-mail I sent to
8 Defendants' counsel on the morning of May 14, 2007, inquiring into the status of the supplemental
9 discovery responses Defendants' counsel had promised to serve by May 11, 2007. I also left
10 Defendants' counsel (Ms. Calkins) a voicemail on this subject during the afternoon of May 14.

11 23. Attached hereto as Exhibit **21** is a true and correct copy of Defendants' Supplemental
12 Responses to Plaintiffs' First Set of Requests for Production of Documents, dated May 14, 2007.

13 24. Attached hereto as Exhibit **22** is a true and correct copy of an e-mail I sent to
14 Defendants' counsel on May 15, 2007.

15 25. Attached hereto as Exhibit **23** is a true and correct copy of an e-mail I sent to
16 Defendants' counsel on May 16, 2007.

17 26. Attached hereto as Exhibit **24** is a true and correct copy of an e-mail I sent to
18 Defendants' counsel on May 17, 2007.

19 27. Attached hereto as Exhibit **25** is a true and correct copy of an e-mail I received from
20 Defendants' counsel on May 17, 2007.

21 28. Attached hereto as Exhibit **26** is a true and correct copy of an e-mail I sent to
22 Defendants' counsel on May 17, 2007.

23 29. Attached hereto as Exhibit **27** is a true and correct copy of an e-mail I received from
24 Defendants' counsel on May 18, 2007.

25 30. Attached hereto as Exhibit **28** is a true and correct copy of an e-mail I sent to
26 Defendants' counsel on May 20, 2007.

/s/
Joshua A. Jessen